

<b>JRPP No:</b>	<b>2010SYE095</b>
<b>DA No:</b>	<b>DA 170/2011</b>
<b>PROPOSED DEVELOPMENT:</b>	<b>DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF MULTI STOREY MIXED USE DEVELOPMENT COMPRISING TWO BUILDINGS WITH A TOTAL OF 51 RESIDENTIAL UNITS (27 X 1 BEDROOM, 20 X 2 BEDROOM, 4 X 3 BEDROOM) (INCLUDING 4 WORK/LIVE UNITS) 2 COMMERCIAL TENANCIES (189SQ/M RETAIL SPACE) AND 75 CARPARKING SPACES - 551-553 PRINCES HIGHWAY ROCKDALE</b>
<b>APPLICANT:</b>	<b>MECONE</b>
<b>REPORT BY:</b>	<b>Development Assessment Planner, - Fiona Prodromou</b>

## Assessment Report and Recommendation

As the capital investment value of the proposed development exceeds \$10 million, the proposal is to be determined by the Joint Regional Planning Panel (JRPP).

Council is in receipt of a development application seeking consent to demolish the existing structures and construct a multi storey mixed use development comprising two buildings being, Building A (7 storeys) fronting Princes Highway and Building B (9 storeys) fronting Keats Avenue.

The proposal as amended, comprises a total of 51 residential units, being 27 x 1 bedroom, 20 x 2 bedroom, 4 x 3 bedroom, including 4 work/live units. (Block A – 18 units + 4 live/work units / Block B – 29 units)

The development also includes two (2) commercial tenancies fronting the Princes Highway, basement and ground level car park for 75 vehicles, and associated landscaping and communal open space at podium level between the two buildings.

The site is located within the Rockdale Town Centre and is currently zoned 3(a) General Business. The site is proposed to be zoned B2 Local Centre under the Draft Rockdale LEP 2011.

The maximum FSR currently permitted for this site is 3.5:1 in accordance with Rockdale LEP 2000. There is currently no height restriction applicable to the subject site.

The Draft Rockdale LEP 2011 proposes a 3.5:1 FSR and 28 metre height limit on the site.

The application has been publicly notified from 18 November 2010 to 2 December 2010. Amended plans were re-notified from 8 - 23 February 2011.

DA 1264/2003 was a previous approval for the site, this has since lapsed. DA 1264/2003 was for a mixed use development consisting of two towers six (6) and nine (9) storeys in height and containing two (2) retail units, five (5) work units, four (4) work/live units, 28 x 1 bedroom units, 16 x 2 bedroom units, 2 x 3 bedroom units and basement car parking. The previously lapsed proposal is similar in nature to the current proposal.

The site is located on the western side of Princes Highway with a secondary frontage to

Keats Avenue at the rear. The site adjoins the predominantly residential Arena development on its southern boundary. An older style commercial development adjoins the northern boundary. An application has recently been received by Council to redevelop this site for mixed use purposes. A large residential development known as the Rockdale Gardens towers is located to the west, on the opposite side of Keats Avenue.

The first public notification period generated 7 letters of objection including 2 petitions. The issues raised by the residents relate to height, overshadowing, view loss, overdevelopment of the site, traffic and parking impacts etc. These issues are further explained in the body of this report.

The second public notification period, resulted in a total of 2 letters of objection, and 1 petition.

## Committee Recommendation

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## Officer Recommendation

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1. That DA 2011/170 for the demolition of existing structures and construction of multi storey mixed use development comprising two buildings with a total of 51 residential units (27 x 1 bedroom, 20 x 2 bedroom, 4 x 3 bedroom) (including 4 work/live units) 2 commercial tenancies (189sq/m retail space) and 75 carparking spaces at 551-553 Princes Highway Rockdale be approved pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

2. That objectors be notified of the JRPP's decision.

## Report Background

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### BACKGROUND

29 July 2004  
DA 1264/2003 approved by Council for the subject site. For a mixed use development consisting of two towers six (6) and nine (9) storeys in height and containing two (2) retail units, five (5) work units, four (4) work/live units, 28 x 1 bedroom units, 16 x 2 bedroom units, 2 x 3 bedroom units and basement car parking. This DA has since lapsed.

4 November 2010  
DA 170/2011 submitted for the site. Demolition of existing structures and construction of mixed use development comprising 55 residential units including 4 work/live units, 2 commercial tenancies and 64 carparking spaces

4 November 2010  
DA referred to JRPP via website and hard copies mailed

17 MEMO to Councillors November regarding submission of 2010 DA

18 Public November notification and – 2 newspaper advertisement of 2010 DA

2 Design Review December Panel 2010 consideration

3 Copies of submissions forwarded to JRPP via mail and 2010 email

3 MEMO to Councillors advising of petition received and seeking any submissions in respect of proposal December 2010

21 21 day letter requesting amended plans and additional information December 2010

19 JRPP first preliminary January meeting to discuss proposal 2011

4 Amended plans and additional information submitted to Council. Modifications to proposal reduced unit numbers by 4 from 55 to 51, and further reduced carparking numbers by 5, from 64 spaces to 59 spaces. February 2011

8-23 Renotification of February amended plans 2011

3 Second Design March Review Panel 2011 meeting.

4 Applicant advised to comply with Council parking requirements. March 2011

16 Applicant submitted amended plans, incorporating car stackers within the development, to increase parking spaces on site from 59 to 75 car spaces. March 2011

14 JRPP meeting April for 2011 determination

## PROPOSAL

Council is in receipt of a development application DA-2011/170 at 551 & 553 Princes Highway, ROCKDALE NSW 2216, which seeks consent to demolish the existing structures and the construction of a multi storey mixed use development comprising two buildings being, Building A (7 storey's) fronting Princes Highway and Building B (9 storey's) fronting Keats Avenue. The building separation on site between Building A and Building B is 14.44m.

The proposal comprises a total of 51 residential units (27 x 1 bedroom, 20 x 2 bedroom, 4 x 3 bedroom), including 4 work/live units and 2 adaptable units.

The development also comprises two (2) commercial tenancies fronting the Princes Highway (189sq/m combined retail space), ground level and basement car parking with provision of a car stacking system, with total carparking capacity for 75 vehicles. Associated landscaping and communal open space is provided at podium level between the two buildings in the centre of the site.

Associated drainage works, fire exits and a residential lobby on Keats Avenue and the Princess Highway are also proposed on site.

Excavation to a maximum depth of 5.3m is proposed, in order to provide for basement car parking on site. The proposed basement will comprise parking areas, car stackers, residential storage cages, plant rooms, lift access and fire stairs, along with bicycle storage and a garbage room for the development.

## **EXISTING AND SURROUNDING DEVELOPMENT**

The subject site is located within the heart of the Rockdale Town Centre. The site comprises two properties and together forms a 25.2m frontage to the Princes highway, 25.1m frontage to Keats Avenue to the rear, and a total combined area of 1359sq/m. The site rises slightly from east to west, by approximately 2m, with a Sydney Water Sewer line running horizontally through the centre of the site.

The site currently comprises two single storey retail / commercial premises, being a furniture store within 551, with 553 currently being vacant. To the north of the site lies a two storey retail / commercial building, with sites further north all being either 1 or 2 storeys in height at maximum.

To the south of the site lies the "Arena" development at 555 Princes Highway, this is a multi storey mixed use development. This development has been constructed at the periphery of the site with a central landscaped courtyard and pool. The Arena development is a mixed commercial residential development up to 10 storeys in height. It includes 178 residential units, 433sq/m of commercial floor space, 240sq/m of flexible space and basement car parking for 218 vehicles. The site comprises recreational facilities for residents including a gym and pool.

To the west of the site lies the Keats Avenue development "Rockdale Gardens", being 3 x 13 storey towers comprising a total of 288 residential units, parking at ground and level 1 and commercial space on level 2. Further to the west lies the East Hills Railway line.

To the east of the site lies the Princes Highway, directly opposite the site is a mixture of commercial and mixed use buildings ranging in height from one to ten storeys fronting the Princes Highway.

To the north of the site, lies 541-545 Princes Highway, a two storey older style building, comprising ground level retail space and first floor commercial. On 25 March 2011, Council received a Development Application for the subject site, proposing the demolition of existing structures & construction of two x nine storey mixed use buildings, comprising basement and ground level parking (39 spaces), two commercial tenancies, 4 live/work units, 24 x 2 bedroom units and 2 x 2 bedroom plus study units.

Rockdale railway station and bus interchange are located further north of the site, within 200m walking distance.

## **PLANNING**

## **CONSIDERATION**

An assessment of the application has been undertaken pursuant to the provisions of the Environmental Planning and Assessment Act, 1979. The following matters below are those requiring the consideration of Council.

**SECTION 79C(1) – MATTERS FOR CONSIDERATION – GENERAL**

**Provisions of Environmental Planning Instruments (S.79C(1)(a)(i))**

**State Environmental Planning Policies (SEPP's)**

**State Environmental Planning Policy - Building Sustainability Index (BASIX)**

The applicant has submitted a BASIX Certificate for the amended development. The Certificate number is 337094M\_02. The commitments made result in the reduction in energy and water consumption shown below.

Reduction in Energy Consumption	20
Reduction in Water Consumption	40
Thermal Comfort	Pass

A condition is proposed on the consent to ensure that the BASIX requirements are adhered to.

**State Environmental Planning Policy No 55 – Remediation of Land (SEPP55)**

The property is identified in Council's records as comprising a "Preliminary Site Contamination Investigation". The previous development application submitted with Council in 2003 for the site, was accompanied by a Contamination Report. This report had concluded that there was no significant contamination on the site and that the site was suitable for the proposed development. The current development application was accompanied by a supplementary report to this original contamination report, stating that the use of the site has not changed and that no significant development of the site has occurred, as such the conclusions of the original report are still valid.

Given no physical changes have occurred or significant uses likely to contaminate the site have occupied the site since 2003, it is considered that the Contamination Report submitted as part of the previous application is still valid. The the proposal is considered to meet the requirements of SEPP 55 and will be conditioned to ensure the Recommendations of the report are abided by.

**State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development (SEPP 65)**

In accordance with clause 30 of this policy, the consent authority must take into consideration the following:

a. The advice of the Design Review Panel (DRP)

The proposal has been referred to the Design Review Panel on 2nd December 2010 with secondary consideration of the amended proposal on 3 March 2011. The Panel at its March 2011 meeting, concluded that the proposal has improved substantially, the following issues of concern remained outstanding;

*i) The number of small units, especially those on the Princes Highway and considers that the number of units should be further reduced and that the number of very small one bedroom*

units be reduced.

*Comment:* The original proposal sought to provide for 31 x 1 bedroom units (including 2 adaptable and 4 live work units) and 24 x 2 bedroom units. Following consideration by the Design Review Panel in December 2010 and concerns raised by Council in respect of the unit mix, the number of units were reduced by 4, and varied, to include a mix of unit sizes within the development.

The amended proposal now seeks to provide 51 residential units, being 27 x 1 bedroom, 20 x 2 bedroom, 4 x 3 bedroom, including 4 work/live units. This mix is considered to be satisfactory.

The proposed unit sizes vary and have been assessed against the minimum unit areas as outlined in the Residential Flat Design Code, the proposed unit sizes comply with the RFDC requirements.

*ii) The lack of communal space for residents. Communal space should be provided for the residents.*

*Comment:* An assessment of both the private open space and communal open space provided within the development has been undertaken. Each unit is generally provided with a minimum of 20sq/m of private open space, along with a total of 294sq/m of communal open space at podium level. This includes a centralised turfed lawn area, water features, tree and shrub planting's and timber bench seating. The proposed communal open space area provided is considered to be sufficient and in accordance with the requirements of Councils Draft DCP 2011.

*iii) Noise from the Princes Highway to the very small units in particular.*

*Comment:* The matter of noise likely to be generated from the Princes Highway, has been addressed under the heading State Environmental Planning Policy (Infrastructure) 2007 further in this report.

b. The design quality of the residential flat building when evaluated in accordance with the ten design quality principles

The 10 design quality principles have been considered in the assessment of the proposal and are found to be satisfactory as indicated below.

*Principle 1: Context*

The proposed development is considered to appropriately respond to its context and its commercial zoning by emulating height, bulk, scale, form and nil front setbacks of surrounding developments.

*Principle 2: Scale*

The proposal has been amended since its original submission, with modifications to the facades to remove blade walls, reduction in overall height and setback of top floors at front and sides. The scale of the development is considered to be satisfactory and responsive to existing surrounding development.

The proposal contributes to the established high rise streetscape that adjoins and surrounds the site, both along the Princes Highway and Keats Avenue.

*Principle* 3: *Built* *Form*

Modifications to the built form were incorporated following the initial Design Review Panel Meeting in December 2010, these have been detailed in "Scale" above. The built form of the development is consistent with existing surrounding development and is considered satisfactory in the context of the Rockdale Town Centre.

*Principle* 4: *Density*

The proposed development is considered to comply with the maximum permissible FSR for the site. The proposed density for the site is considered satisfactory. Further in relation to the existing density in the area, as expressed by the height of existing buildings fronting Princes Highway in the vicinity of the site, the proposal is considered to be consistent with this existing density.

The proposal responds appropriately to its immediate and regional context. Satisfactory building separation and stepping in of the buildings at the top levels is also achieved. A building of the density proposed is appropriate given its location on a major arterial road with good public transport links.

*Principle* 5: *Resource, energy and water efficiency*

The development is considered to be satisfactory in relation to this design quality principle.

*Principle* 6: *Landscape*

The commercial zoning of the site necessitates a different approach to landscaping than if the site were to be residentially zoned. A solid urban edge to Princess Highway and Keats Avenue, is appropriate within this context. Soft landscaping treatments have been provided within a podium communal open space area, at first floor level, to provide amenity to residents.

*Principle* 7: *Amenity*

The proposal provides for ample, bedroom, bathroom, kitchen, living room and winter garden areas. Sufficient storage is provided within the dwelling and also supplementary within the basement. Visual and acoustic privacy within the development and to its neighbours is considered to be satisfactory. The proposal is considered to be satisfactory in relation to amenity.

*Principle* 8: *Safety and Security*

It is noted that the NSW Police raised no objections to the proposal subject to a number of conditions including the installation of CCTV. Appropriate conditions are recommended.

*Principle* 9: *Social Dimensions*

The proposal will add a range of housing stock to the Rockdale local government area as well as providing flexible space for home office conversions within the development.

*Principle* 10: *Aesthetics*

The development is considered to be appropriately designed and articulated. The external finishes and colours chosen have been designed to complement the existing surrounding built environment and are contemporary in nature.

c.	The	Residential	Flat	Building	Code.
<i>Residential</i>		<i>Flat</i>	<i>Design</i>	<i>Code</i>	<i>(RFDC)</i>
<i>Building</i>					<i>Separation</i>

The building separation distances between the amended development and the adjoining buildings are compared with the suggested separation distances in the RFDC in the tables below.

Separation Distance based on levels (habitable rooms / balconies)	RFDC Suggested Separation	Proposal	Complies
Ground to Level 4	12m	14.44m	Yes
Levels 5 - 8	18m	14.44m	No
Level 9 +	24m	14.44m	No

As can be seen from the above table, the proposed development does not comply with suggested building separation distances in the RFDC for the upper levels 5- 9.

It is noted that if the suggested separation distances of the RFDC of 24m were to be strictly observed, the redevelopment potential of almost the entire site floors 5 and above would be forfeit, as reasonable unit depths and areas could not be achieved.

The separation distances in the RFDC are "suggested" only. The underlying objectives of the suggested building separation distances in the RFDC have been considered as follows:

*"To ensure that new development is scaled to support the desired area character with appropriate massing and spaces between buildings"*

The scale of the development is considered to be appropriate, given the scale of other existing buildings fronting onto Princes Highway and Keats Avenue. The top floor of both buildings, has been setback 1.5m from side boundaries in accordance with the neighbouring southern development "The Arena".

*"To provide visual and acoustic privacy for existing and new residents"*.

Separating buildings is not the only means in which visual and acoustic privacy of both existing residents in surrounding buildings and future residents of the development can be protected. Notwithstanding the non complying separation distances, due to the incorporation of vertical louvers to the rear of Building A and deep winter gardens with horizontal louvered facades to the front of Building B, in most cases, privacy is not considered to be detrimentally affected within the development nor to its southern neighbour. Visual privacy has been detailed further in the report under the heading of "Visual Privacy".

*"To control overshadowing of adjacent properties and private or shared open space"*

Shadows to Arena Development

In regard to overshadowing, it is reiterated that the site lies directly north of "The Arena" development. The site is constrained by its orientation. An assessment of shadow diagrams and elevational shadows submitted, indicates that the proposal does overshadow the southern adjoining Arena development.



Due to the east west orientation of the site, the proposed development being positioned on its side boundaries, and the height of the development, it is likely that the lower floors of the adjoining southern Arena development, closest to the subject site, will have solar access to their eastern facing balconies and windows reduced to less than three hours per day in midwinter.

Units on the lower levels of the Arena development closest to the northern proposed neighbour, will lose eastern sun to their bedrooms, living areas and balconies and are likely to only achieve 1 hour of direct sunlight in midwinter. The top floor north eastern unit being 172/555 Princes Highway will receive eastern sun to its main living area and eastern bedroom from 9am - 11am in midwinter, with the northern top floor courtyard receiving partial sunlight between 11am - 1pm. At 2pm the northern courtyard of this dwelling is overshadowed by the western "Rockdale Gardens" towers.

The pool of the "Arena" development, which lies closest to the subject development site, will receive partial sunlight in midwinter at 9am, 10am and 1pm. The communal open space located, furthest from the development site, will achieve sunlight during midwinter, being in full sun from 10am - 1pm due to its positioning.

Solar access to these areas in midwinter is achieved as a result of the break in built form as is proposed upon the subject site.

Solar access is obtained to the Arena development during the equinox period, with morning sunlight to the eastern and northern facades of dwellings and their balconies. An increase is also obtained in the degree of sunlight obtained to the pool area, from 9am - 1pm during the equinox. Equinox shadows indicate that the pool area is in sun for more than 3 hours per day.

Given the existing east west site orientation, overshadowing to the immediate southern adjoining neighbour is considered to be unavoidable where new multi storey developments are proposed. To increase solar access to the affected, would require the height and depth of buildings proposed on the subject site to be reduced significantly. This is considered to be unreasonable given the suitability of the site for redevelopment.

#### Shadows to Rockdale Gardens Development

An assessment of overshadowing impacts in midwinter to the western Rockdale Gardens Towers has been undertaken. The proposed development indicates that it will overshadow the lower floors of Rockdale Gardens Tower 2 from 9am, with this shadow receding and being entirely absent at 11am. From 11am - 3pm in midwinter the proposed development does not overshadow any of the 3 Rockdale Gardens towers, these towers begin to overshadow each other at 11am.

*"To allow for the provision of open space with appropriate size and proportion for recreational activities for building occupants"*

*"To provide deep soil zones for stormwater management and tree planting, where contextual and site conditions allow"*

The communal open space and the private balconies as provided are considered to be generously proportioned for recreational and entertaining activities. Given the commercial zoning of the land, it is not considered necessary for deep soil zones. The proposal includes on-site stormwater detention which is considered satisfactory.

Given the above, it is considered that the underlying objectives of the suggested building separation provisions of the RFDC are adequately satisfied by the development and that lesser building separation must be accepted in this instance in order to facilitate the redevelopment of the site.

**State Environmental Planning Policy (Infrastructure) 2007**

The subject site fronts onto the Princes Highway which is a State Road. As such the following clauses from SEPP Infrastructure apply;

*Clause 101 - Development with Frontage to Classified Road / Clause 102 - Impact of Road Noise or Vibration on Non Road Development*

The above mentioned clauses require that the consent authority not grant consent to development on land that has a frontage to a classified road unless it is satisfied that, vehicular access to the land is provided by a road other than the classified road and that the development is appropriately acoustically mitigated in respect to potential traffic noise, vibration & emissions.

The subject site comprises an east facing frontage to Princes Highway and western frontage to Keats Avenue to the rear. The proposal seeks to provide vehicular access from Keats Avenue to the rear, in order to ensure the uninterrupted operation of the Princes Highway, which is a classified road, is not affected by the development.

The proposal has been accompanied by an Acoustic Report, prepared by Vipac Engineers and Scientists (Ltd), dated 27 September 2010. The report considered the impact of external noise intrusion into the development, including rail, traffic and aircraft noise, in addition impacts of rail vibration and any noise emission from the proposed development to any affected neighbours.

The report concluded that the proposed development is acceptable provided that noise control measures as outlined in the Acoustic Report are incorporated into the construction of the development. The proposal will be conditioned to ensure the acoustic treatments are incorporated into construction. The proposal is considered to satisfy the requirements of both clause 101 and 102 of the SEPP.

**Environmental Planning Instruments**

**Local Environmental Plans (LEP's)**

Rockdale	Local	Environmental	Plan	2000	(RLEP	2000)
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The following are the relevant matters from Council's Local Environmental Plan 2000.

**Clause 12 – Zone Objectives and Controls**

The subject site is zoned 3(a) General Business. The proposed mixed use development is permissible upon the site subject to development consent. The proposal provides for a total of mix of 51 residential units, including 4 live/work units, and 2 retail shops with a total area of 189sq.m, fronting the Princes Highway. The proposed mixed use development is considered to generally satisfy the requirements and objectives of the zone.

**Clause 14 – Subdivision**

The applicant does not seek to strata subdivide the proposed development at this time.

**Clause 18 - Noise and Vibration**

The site is located between the 20 and 25 ANEF – 2023-2024 contour lines. As such in accordance with clause 18(2) in RLEP 2000 consideration has been given to the impact of aircraft noise on the development. An acoustic report prepared by Vipac Marchese and Partners and dated 27th September 2010, has been submitted with the application.

In addition, the Princes Highway is classified as a State Road and Clause 18(4) in RLEP 2000 requires the development to incorporate noise mitigation measures, which meet the Environmental Protection Authority requirements.

The applicants Acoustic Report is considered to have taken associated noise sources into consideration, including aircraft, traffic and rail related noise. The recommendations of the report have been incorporated in the development consent. The proposed residential dwellings will be appropriately acoustically treated during construction, to ensure noise impact from noise sources is minimal.

**Clause 21 - Land filling and excavation**

Excavation is required on site for the construction of the basement carparking level and provision of car stackers on site. The natural contours of the site rise slightly from east to west, by approximately 2m. The maximum depth of excavation proposed on the site is 5.3m, this is located directly beneath the proposed building envelope and adjoins the boundaries of the site.

The objectives and requirements of Clause 21 of RLEP 2000 have been considered in the assessment of this application. The proposed excavation is located upon the boundaries, and as such relevant conditions will be imposed to ensure that the environmental amenity of adjoining properties is maintained, and soil erosion, sedimentation, and drainage impacts are minimised. The proposal will further be conditioned to require a dilapidation survey of adjoining properties and public areas in the vicinity of the site.

**Clause 23 - Ecologically Sustainable Development**

Ecological sustainability has been considered as part of this application and is consistent with the requirements contained in RLEP 2000.

**Clause 37(3) - Floor Space Ratio**

The proposed development site is identified as comprising a maximum 3.5:1 floor space ratio, in accordance with the subject clause. The proposed development has been assessed, excluding the winter gardens as proposed from the floor space, as the intention is that they act as private open space and are considered to comprise external elements despite the glazing proposed.

The proposed development comprises a total gross floor area of 4743.3sq/m and a site area of 1359sq/m. The proposed development complies with the development standard, proposing a development with a total FSR of 3.49:1.

**Environmental Planning and Assessment Model Provisions 1980 (as adopted by clause 10 of Rockdale Local Environmental Plan 2000)**

5(1) Probable Aesthetic Appearance from Main Road

The proposed development has been appropriately setback, designed and articulated to front the Princes Highway. The facade of Building A fronting onto the Princes Highway is proposed to be provided with "*operable glass louvered facade*". Specifications provided by the applicant indicate that this façade will have a low reflectance and glare value.

The external finishes and colours chosen have been designed to complement the existing surrounding built environment and are contemporary in nature. The proposed development is considered to provide a satisfactory aesthetic appearance from the Princes Highway.

#### 5(2) Vehicular Access / Parking / Loading / Unloading

Councils Engineer considered the provision for vehicular access, parking, loading and unloading on the subject site, which was considered to be satisfactory and in compliance with Council requirements.

#### Provisions of any Draft Environmental Planning Instruments (S.79C(1)(a)(ii))

##### **Rockdale Draft LEP 2011**

Rockdale Draft LEP 2011 is applicable to the subject site. The proposed zone for the site in accordance with the draft LEP, is B2 Local Centre. Development for the purpose of "mixed use development" is permissible within the proposed zone, subject to consent. The proposed development is considered to be consistent with the objectives of the proposed future zone for the site.

Draft LEP 2011 proposes a 3.5:1 FSR for the site, which is also the existing FSR applicable under Rockdale LEP 2000. In addition, a height restriction of 28m overall building height is introduced and applicable to the site.

The proposed development comprises an overall building height at the highest point being the lift overrun for Block B fronting Keats Avenue of 28m and an overall building height of 22.5m for Building A fronting the Princess Highway. The proposal complies with the height requirement of the Draft LEP 2011.

The proposal, as previously discussed, complies with the 3.5:1 FSR standard, and as such satisfies the FSR requirements of the Draft LEP 2011.

#### Provisions of Development Control Plans (S.79C(1)(a)(iii))

##### **Interim Mixed Use Policy**

This policy requires the following:

*The non residential component shall be 10% of the gross floor area of the development.*

*Comment:* The proposal is required to provide a minimum of 10% of the GFA of the development as commercial / retail / office space. This represents a total of 474.33sq/m of commercial / retail / office space required within the development.

The proposal has provided for 2 retail shops at ground level comprising 189sq/m and 4 proposed live/work units, comprising a total of 200sq/m. Combined this equates to a total of 389sq/m of proposed retail and capable of being adapted commercial / office space. A shortfall of 85.3sq/m is proposed.

The proposal will be conditioned in order to ensure an additional 2 units, being B1.02 and

B1.03 are modified in layout and provided as live work units within the development. This will increase the total provided commercial / retail / office space to 489sq/m, which is in excess of the requirement.

*The non residential component should cater for both retail and commercial functions.*

*Comment:* The proposed retail spaces at ground level and first floor live / work units are considered to satisfy this requirement in that the development will cater for both retail and commercial functions.

*The non residential component should be at the street frontage.*

*Comment:* The proposal has provided for 2 retail tenancies along the Princess Highway primary frontage. In addition a total of four (4) live / work spaces are proposed within level 1 of Building A.

The proposal has not provided for retail premises fronting Keats Avenue, this option was explored and it was considered that given the 25.1m Keats Avenue frontage and services required to be provided along this frontage for the development, a reasonably sized retail premises along this frontage was not achievable.

Notwithstanding, the proposal is considered to be consistent with existing development forms and uses within Keats Avenue, to which minimal retail premises are provided at ground level. The proposal is considered to be satisfactory.

*The development should be compatible with the developments in the locality.*

*Comment:* The proposal complements the commercial / residential character of the area.

*A minimum 20sq.m. private open space to be provided to each residential unit. A minimum of 5sq.m. per residential unit to be provided as communal area in consolidated areas suitable for community use.*

*Comment:* The proposal complies with these requirements, with the exception of live / work unit A 1.02 which is provided with 18.6sq/m of private open space. Given the minor shortfall of 1.4sq/m and the direct access from this unit to the podium communal open space area on the same level, a minor variation is considered to be satisfactory.

*A lift to be provided to all levels.*

*Comment:* Lift access is provided to all levels.

### **Residential Amenity Improvement Strategy**

Control	RAIS Requirement	Proposal	Complies
Noise Criteria	5 star rating AS 2021	Satisfactory in accordance with submitted Acoustic Report	Yes
Number and Size of Bathrooms	A main bathroom and second toilet, ensuite, or bathroom required for 2 or more bedroom units	Satisfactory	Yes
Minimum Size of Units	Small 75sq/m	50sq/m	No (1)

	Medium 100sq/m Large 115sq/m	89sq/m 124sq/m	No Yes
Private Open Space	Minimum 12sq/m being 3m x 3m Accessed from living area	Satisfactory	Yes
Balustrades	Solid/opaque material Min height 0.8m Min overall height 1.2m (top)	Louvered floor to ceiling	Yes
Lift Size and Access	Lift required min 2.1m x 1.5m	2.1m x 2.1m	Yes
Internal Storage Areas	2m x 2m x 2.7m (10.8 cubic metres)	Insufficient for 1 & 2 bedroom units	No (2)
Ceiling Heights	Minimum 2.7m floor to ceiling	2.9m	Yes
Letter Boxes	Weather protection	Satisfactory	Yes
Entry Foyer and Corridor Width	Provide level access from public areas to the building Minimum 2m width	Satisfactory	Yes

*Non*

*Compliances*

1.

*Unit*

*Sizes*

The proposed 1 and 2 bedroom units within the development do not comply with Councils RAIS requirements in respect of unit size. The one bedroom units proposed are 50sq.m, comprising a 25sq/m shortfall of the required 75sq/m in accordance with RAIS. Two bedroom units are proposed at 89sq/m, comprising an 11sq/m variation to the 100sq/m RAIS requirement.

The 1 & 2 bedroom units although comprising a shortfall with Council RAIS requirements, have been designed in accordance with the Residential Flat Design Code (RFDC) and comply with the minimum internal area requirements of the RFDC.

Consideration has been given to the layout and design of the proposed 1 and 2 bedroom units and it is considered that appropriate amenity can be achieved with the current design. Bedroom, bathroom, kitchen and living room areas are considered to be ample, with sufficient storage provided within the dwelling and also supplementary within the basement. The 1 and 2 bedroom units are also provided with a generous winter garden, each ranging from 18.6sq/m to 28.8sq/m.

Given the above, a variation to the unit sizes is considered to be warranted in this instance.

2.

*Internal*

*Storage*

*Areas*

The proposed 1 & 2 bedroom units, do not satisfy the RAIS required 10.8 cubic metres storage space within each dwelling. The total storage space provided for 1 and 2 bedroom units, which is provided both within the basement and unit, ranges from 6.3cubic metres to 10.7cubic metres. This indicates a shortfall in required RAIS storage space for some units, of between 0.1 cubic metres to 4.5 cubic metres.

Notwithstanding the above non compliance, it is highlighted that the storage as provided, complies with the SEPP 65 storage requirements and objectives, as outlined in the

Residential Flat Design Code. As such, given compliance with the SEPP, the proposal is considered to be satisfactory.

***Development Control Plan No. 28 - Requirements for Access (DCP 28)***

DCP 28 requires the provision of 2 adaptable units, along with associated parking for the development. The proposal provides for 2 adaptable units, being B2.03 and B3.03 within building B fronting Keats Avenue. Accessible parking to accompany these units has been provided. The proposal complies with this DCP. Conditions of consent are proposed to ensure compliance with DCP 28 and Disability Discrimination Act requirements.

***Development Control Plan No. 53 - Construction Site Waste Management and Minimisation Plan (DCP 53)***

The applicant has submitted a Waste Management Plan. The recommendations of the waste management plan shall be implemented during demolition and construction. Additional measures must be in place to ensure compliance with the aims and objectives of DCP 53 and will be incorporated as conditions of consent.

***Development Control Plan No. 67 - Crime Prevention through Environmental Design (DCP 67)***

Consideration has been given to the requirements and objectives of DCP 67 in the assessment of this proposal. The proposal incorporates measures consistent with the safer by design principles including secured intercom basement and residential entry to each building on site. The proposal has been referred to NSW Police, who have recommended conditions of consent, in respect to provision of CCTV in order to maximise safety and security. NSW Police recommendations have been incorporated into conditions of consent.

The proposed development is considered to satisfy the objectives and requirements of DCP No.67.

***Development Control Plan No. 78 – Stormwater Management (DCP 78)***

The proposed stormwater system has been assessed by Councils Engineers and was found to be satisfactory.

***Parking & Loading Code***

Councils Engineer considered the provision for vehicular access, parking, loading and unloading on the subject site. Given the latest amendments to plans, which provide for a total of 75 car spaces on site, utilising a car stacking system, the proposal was considered to be satisfactory and in compliance with Council requirements subject to conditions of consent.

Draft Rockdale Development Control Plan No.69 - Rockdale Town Centre

This Draft DCP has never been formerly adopted by Council. It is referred to in this report for completeness. Draft DCP 69 sets a maximum height for the subject site of 3 and 6 storeys. The proposed development does not comply with this height.

Given the 7-10 storey high density mixed use developments as approved in the last few years by Council, it is clear that Council has not been consistently enforcing the building height provisions in this Draft DCP. Draft DCP 69 is not considered to accurately reflect the desired future character for the area given the above and given the greater heights up to 28m, as most recently exhibited as part of Rockdale Draft DCP 2011.

**Rockdale                      Draft                      DCP                      2011**

## Provisions of Regulations (S.79C(1)(a)(iv))

Council's building surveyor has assessed the fire safety considerations under the BCA and conditions of consent are recommended.

**Impact of the Development (S.79C(1)(b))**

The proposed development is located opposite 554 -556 Princes Highway, which is on the eastern side of the Princes Highway opposite the site. The front boundary of the development site is situated approximately 25m from the front boundary of 554-556 Princes Highway. In addition, the proposed development has provided for deep winter gardens (2m - 5.6m in depth) fronting the Princes Highway, which provide for an additional buffer between the two sites. Privacy to this neighbour is not considered to be adversely affected by the development.

Deep winter gardens with operable horizontal louvered facades are provided to the front (east) of Building B, along with blade walls which extend out to the edge of the wintergardens. The depth of the winter gardens and positioning of the blade walls, aim to direct the view of these units towards the rear of Building A. In addition, full height glazed louvers closely spaced together, will not allow future occupants to lean over the perimeter of the winter garden, to view and obtain sightlines into the neighbouring property, as would a traditional balcony form.

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southern

neighbour.

Building B, fronting Keats Avenue, on the subject site is located approximately 22m at the closest point to the Rockdale Gardens towers opposite. The distance of separation between these buildings is considered to be reasonable visual privacy between the balconies and windows of the Rockdale Gardens tower and the juliet balconies and bedrooms of building B, all fronting Keats Avenue, are considered to be retained given the distance of separation between buildings.

#### *Overshadowing*

The matter of overshadowing has been previously addressed within the report.

*Streetscape* / *Density* / *Bulk* / *Scale*

The proposal has been previously assessed against density, bulk and scale and is considered to be consistent with the existing established streetscape in Princes Highway and Keats Avenue.

#### *Views*

A site inspection of unit 172/555 Princes Highway indicates that northern distant CBD skyline views and in general western and eastern locality skyline views are currently available from the main top floor living area, northern balcony of the unit, and through bedroom windows. The northern distant city skyline views are obtained via a side view corridor to the north, over the subject development site, which is currently undeveloped. Should the proposal proceed, it is acknowledged that these distant northern views will be affected as a result.

The previously approved scheme on the subject site which has since lapsed, had the Keats Avenue facing building, approved with an RL of 43.25 to the ceiling of the top floor and RL 44.25 to the top of the lift overrun. This previously approved scheme resulted in the loss of distant northern city skyline views to 172/555 Princes Highway.

The current Keats Avenue proposed building is provided with a maximum RL 42.2 to the ceiling of the top floor and RL 43.8 to the top of the lift overrun. The current proposal is comparatively lower than the previously approved scheme on the subject site.

It is reiterated that the development site lies to the side, adjacent and directly north of the unit in question, and that in order to retain the distant northern city skyline views of this unit, the development would be required to be significantly reduced in height. There are currently no specific height restrictions imposed on the subject site. Reduction in the height of the proposed building is considered to be unreasonable, given the proposal is of the same height, bulk and scale as existing surrounding development and complies with Council requirements in respect of FSR and height in accordance with Rockdale Draft LEP 2011.

The southern dwelling, 172/555 Princes Highway, although likely to lose distant northern city skyline views to the side, will primarily retain its existing eastern and western skyline views of the locality and towards Botany Bay.

North eastern facing units located at the upper levels 3- 9 of the Rockdale Gardens Tower 2, currently comprise north eastern distant city skyline views and views towards Botany Bay via a view corridor over the currently undeveloped development site. It is likely that these views will be reduced given the proposed redevelopment of the site. The upper levels 10 - 13 of this tower are likely to retain their views, given these levels are higher than the proposed development.

The distant views are not considered to be "magnificent" (*Tenacity Consulting vs Ku-ring-gai Council 2004*) and it is reiterated that these views are currently available, as the subject site and its northern neighbours (531-543 Princes Highway) are as yet not developed to their full potential. It is not reasonable to assume that the views currently enjoyed by residents within the tower, will be permanently retained. Therefore the view loss is not considered to be a significant degradation of the amenity enjoyed by these neighbours with regards to view loss.

*Traffic*

/

*Parking*

As previously stated, Council's Engineer has considered the matters of parking, loading, unloading and traffic, during the assessment of this application. It was considered that the proposal has provided for sufficient carparking, loading and unloading areas on site in order to accommodate for the proposed development.

The development is required to provide for vehicular entry / exit from Keats Avenue, given the significant arterial nature of the Princes Highway. Keats avenue is considered to comprise sufficient environmental capacity to accommodate vehicular traffic to and from the development site.

### **Suitability of the Site (S.79C(1)(c))**

The commercial zoning of the site, its prominent location and proximity to public transport make the site ideal for the high rise mixed use development as proposed. Surrounding development on Princes Highway and Keats Avenue indicate that the locality is currently undergoing transition from lower scale to higher density development. The proposed development is considered to be consistent in bulk, scale and form with existing and emerging approved high rise developments surrounding the site.

There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development. The subject site is considered to be suitable for the development proposed.

### **Public Submissions (S.79C(1)(d))**

The development application has been notified in accordance with Council's Development Control Plan No. 50 - Community Engagement in Development Decisions. A total of 7 letters of objection were submitted in opposition to the proposal during the initial public notification period. This included 2 petitions. The second public notification of the proposal resulted in a total of 2 letters of objection and 1 petition.

The issues raised are addressed below.

*View loss from units within Arena Development & Rockdale Gardens / Depreciation of neighbouring properties due to loss of views to the CBD and Botany Bay*

*Comment:* The matter of view loss has been addressed previously within the report. The effect of depreciation has not been quantified nor qualified by the objector, nor applicant, and is in itself a subject of debate beyond the scope of this assessment.

*Minimal articulation to the southern facade which will be the outlook of 172/555 Princes Highway / Visual dominance of building onto 172/555 Princes Highway*

*Comment:* The wall in question is setback 1.5m from the side boundary with the 172/555 Princes Highway and is 2.6m high and is 13.5m in length. This wall is not considered to

significantly overbear or overshadow the objectors balcony.

*Creation of wind tunnel to top floor Arena units*

*Comment:* Wind tunnelling is normally associated at the lower levels of multi storey development as the upper levels are generally more exposed to natural wind exposure. The proposed development may in fact reduce this exposure to some extent.

*Traffic / Car parking impacts / Has a traffic survey been undertaken of Keats Avenue, which is a no through road*

*Comment:* Creation of new vehicular entrances and exits from the Princes Highway is not a possibility given the arterial nature of Princes Highway. Given the site benefits from a frontage to Keats Avenue, the proposed vehicular entrance and exit is proposed in this location. The matter of traffic has been previously addressed as part of this report.

*Concerns regarding pedestrian movements along Keats Avenue*

*Comment:* The proposed driveway along Keats Avenue is considered to be satisfactory and is not considered likely to generate significant risk in relation to pedestrian and vehicular movement.

*Glare from glass façade on Princes Highway to Arena Development and safety to motorists*

*Comment:* Specifications provided by the applicant in respect to the proposed "operable glass louvered facade with continuous mullion" fronting the Princes Highway, indicate that the reflectivity and glare likely to be generated from this facade is minimal and unlikely to adversely impact upon motorists or pedestrians.

*Noise impact given proposal is built to boundary and wall will reflect highway noise into Arena development*

*Comment:* This acoustic situation has not been quantified or qualified and it is also fair to assume that the proposed building fronting the Princes Highway would buffer a significant portion of acoustic impact from the highway. Further acoustic data is not considered to be warranted.

*Insufficient parking proposed on site*

*Comment:* The proposal was amended on 16 March 2011, to provide for increased carparking on site. A total of 75 carspaces are now provided on site and the proposal complies with Councils Parking and Loading Code.

*Overshadowing to Arena Development pool, gardens and units*

*Comment:* The matter of overshadowing has been previously discussed within this report.

*Overshadowing to Rockdale Gardens units*

*Comment:* The matter of overshadowing has been previously discussed within this report.

*View loss of the CBD skyline to 172/555 Princess Highway on the 6th and 7th level of the Arena Development*

*Comment:* The matter of view loss has been addressed previously within the report.

*Proposal does not comply with DCP 72 - Mixed Use Premises*

*Comment:* In accordance with Clause 1.3(c) it is noted that DCP 72 does not apply to the subject site.

*Proposal does not comply with principles 2 and 3 of SEPP 65 with respect to 24m building separation and side setbacks / No buffer between developments, with proposal being built to boundary*

*Comment:* The proposal has been considered by the Design Review Panel on two occasions and found to be satisfactory. The building separation as stated by the objector is a "suggested" separation distance, outlined in the RFDC.

The matter of building separation was discussed previously within the report and it is reiterated that stated that a lesser building separation must be accepted in this instance in order to facilitate the redevelopment of the site. Provision of a 24m building separation to the southern neighbour would forfeit the redevelopment of this site and is considered to be unreasonable.

The RFDC also suggests that "zero" building separation can be provided in "appropriate contexts such as in urban areas, between street wall building types", as is considered to be in this instance.

*Reports on the environment, noise and traffic should have been prepared before the application was submitted*

*Comment:* The application was accompanied by a detailed Statement of Environmental Effects, in conjunction with an Acoustic and Traffic report. These documents were available for public viewing during the public notification periods.

*Proposal should comply with Rockdale DCP 35 - Residential Flat Buildings*

*Comment:* The above stated DCP does not apply to the proposal, given the proposal is a mixed use development. The principles of SEPP 65 and the Residential Flat Design Code have been considered in the assessment of the proposal.

*Height / Proposal should be limited to 4 storey's*

*Comment:* The matter of height has been previously addressed in this report. The height of the proposal is considered to complement surrounding developments and is considered to be satisfactory.

*Unsympathetic in materials and design / Unsympathetic with existing streetscape / Monolithic structure dominating site / Unacceptable in Bulk and Scale / Inappropriate architectural design*

*Comment:* The proposed development has been broken into two buildings, with a central courtyard. This avoids a lengthy building covering the length of the site and allows for solar access and ventilation to cross through the site.

It is considered that the proposal is similar in bulk, height and scale to surrounding existing developments fronting onto both the Princes Highway and Keats Avenue. The proposed development is lower in height than the western Rockdale Gardens unit towers and considered to be of the same height and mass as the Arena Development to the south. The

current amended proposal is 1m lower in height than the original submission.

The proposed facades at both Princes Highway and Keats Avenue have been articulated and modulated in order to present appropriately to the street. The proposed materials and colours chosen are considered to be contemporary in nature and to complement those as existing and used in surrounding developments.

*Overdevelopment of site / Population impact on surrounding resources / Density*

*Comment:* The proposal complies with the maximum 3.5:1 FSR for the subject site. The development is considered to be appropriate with respect to density as previously discussed. The subject site is located within the Rockdale Town Centre, close to public transport and amenities and is zoned for mixed use redevelopment. The site is considered to be ideal for redevelopment for a mixed use proposal, and is consistent with Councils future direction for the site.

*Insufficient shops provided*

*Comment:* The proposal has provided for 2 retail premises along the Princess Highway primary frontage. In addition a total of four (4) live / work spaces are also proposed within level 1 of Building A. The proposal has not provided for retail premises fronting Keats Avenue, this option was explored and it was considered that given the 25.1m Keats Avenue frontage and services required to be provided along this frontage for the development, a reasonably sized retail premises along this frontage was not achievable. Notwithstanding, the proposal is considered to be consistent with existing development forms within Keats Avenue, to which minimal retail premises are provided at ground level. The proposal is considered to be satisfactory.

*Impact during construction within Keats Ave*

*Comment:* The proposal is subject to conditions of consent which aim to minimise impact to neighbours during the construction phase of the development. These conditions relate to hours of construction, waste disposal, erosion and sediment control, stormwater discharge and a construction traffic management plan, detailing construction vehicle routes, number of trucks, access arrangements and traffic control etc.

*No neighbour discussion prior to lodgement of DA / Developer had no interest to consult neighbours or hear their concerns*

*Comment:* The applicant is not obliged to discuss the proposal with neighbours prior to submission with Council. Council has notified the application on two occasions to inform neighbours as required by the legislation and in accordance with DCP No. 50 Community Engagement in Development Decisions.

*Amenity impacts / Privacy impacts to 554-556 Princes Highway / Overlooking of proposed balconies into Arena development*

*Comment:* The proposed development is located opposite 554 -556 Princes Highway, which is on the eastern side of the Princes Highway opposite the site. The front boundary of the development site is situated approximately 25m from the front boundary of 554-556 Princes Highway. In addition, the proposed development has provided for deep winter gardens (2m - 5.6m in depth) fronting the Princes Highway, which provide for an additional buffer between the two sites. Privacy to this neighbour is not considered to be adversely affected by the development.

Concern has been raised in respect of potential overlooking into the Arena development to the south, including its pool and communal open space areas, from the proposed development. It is noted that vertical louvers have been provided to the rear of Building A which obscure sightlines to the south, and deep winter gardens with horizontal louvered facades are provided to the front (east) of Building B, which also limit sightlines.

In most cases, amenity and privacy is not considered to be detrimentally affected neither within the development nor to its southern neighbour.

*Development will conceal the view of trees in the Arena Development from 554-556 Princes Highway*

*Comment:* The degree of view loss of the trees located within the Arena Development, from the multi storey building opposite the proposed development site at 554-556 Princes Highway, is not considered to be as such, so as to warrant refusal of the application.

<b>Public</b>	<b>Interest</b>	<b>(S.79C(1)(e))</b>
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The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal will allow the development of the site in accordance with its environmental capacity. The proposed building is a high quality building that will add architectural value to the existing streetscape. Furthermore, the proposal is not considered to result in unreasonable amenity impacts on surrounding properties, other than what could reasonably be expected within a higher density living environment. As such it is considered that the development application is in the public interest.

## CONCLUSION

The proposed development has been considered under S79C(1) of the Environmental Planning and Assessment Act, 1979. The application involves the demolition of existing structures on site, excavation for the creation of a basement carpark and construction of two towers to establish a new mixed use development on site.

The subject site is constrained by its orientation as previously detailed, with the applicant seeking to provide the proposed two tower option in order to maximise solar access to the southern adjoining Arena development.

Due consideration has been given to the applicable planning instruments, with matters including but not limited to, views, overshadowing, visual privacy, traffic and carparking being considered as part of this assessment. It has been concluded that the proposal is satisfactory with respect to general consistency with the objectives and requirements of these planning instruments and impacts to neighbouring properties as a result of the proposed development are not considered unreasonable.

As such, the application DA-2011/170 is recommended for approval.